Prejudgment Interest Accruing From Date of Accident: What Will This Mean for Residents, Courts?

This article provides a broad overview of the application of prejudgment interest in New York as it pertains to personal injury matters and discusses what the imposition of a "date of accident" interest-accrual means for New York state residents and the New York court system.

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When accepting a case involving a claim of bodily injury, defense attorneys will evaluate many factors in an attempt to quantify the expected exposure. A key, but often overlooked aspect of this evaluation is the impact of a statutorily imposed rate of interest applied as of the date of the judgment or verdict. To this end, a bill presently in the New York State Legislature may soon require an even more focused approach to case evaluations and implementation of defense strategy. This article provides a broad overview of the application of prejudgment interest in New York as it pertains to personal injury matters and discusses what the imposition of a "date of accident" interest-accrual means for New York state residents and the New York court system.

Background

As it pertains to personal injury matters, Civil Practice Law & Rules (CPLR) Section 5004 sets forth that a statutory 9% per annum interest rate shall be applied as of the date of judgment or verdict. Although the New York Court of Appeals has reasoned that "the purpose of awarding interest is to make an aggrieved party whole," there is no question that a 9% interest rate may be perceived by some to be punitive. (*Spodek v. Park Property Development Association*, 733 NYS2d 674 [2001]).

Recently, there has been movement in the New York State Legislature to enact an even bolder statute with the focus on how interest will apply to personal injury matters, pursuant to CPLR Section 5001.

Statute

Pursuant to CPLR Section 5001(b), "interest shall be computed from the earliest ascertainable date the cause of action existed" and that "where such damages were incurred at various times, interest shall be computed upon each item from the date it was incurred or upon all of the damages from a single reasonable intermediate date."

As it currently stands, this section is applicable only to breach of contract and real property matters. However, Assembly Bill A436 may soon change this.

Purpose and Justification of Assembly Bill A436

Introduced in the 2023-2024 Legislative Session, Assembly Bill A436 seeks to amend the CPLR to require calculation of interest in personal injury matters to be measured from the date the cause of action accrues.

The justification for this bill is that it will "result in a more equitable outcome for those who bring an action that is decided in their favor, often after waiting years for resolution of the matter." This goal of achieving an "equitable outcome" is grounded in the belief that, like breach of contract, real property, and wrongful death claims where judgment is calculated from the date the cause of action accrues, personal injury actions should be treated no differently because lost earnings, medical bills, and other losses are expenses that the plaintiff incurs immediately.

This comparison alone, however, should not justify such a significant statutory change. Other considerations to be weighed include the impact to New York residents and burden on the New York court system.

Impact on New York Residents/New York Court System

If enacted, this bill will have long-lasting ramifications on the insurance industry throughout the state of New York.

It is likely that high/disproportionate verdicts, which are already an issue, will become the new normal. This will come at a cost, both literally and metaphorically. It is no secret that revenue among the insurance industry is based on pricing risk and charging a premium for assuming that risk. It is also no secret that the goal of insurance companies, as with most businesses, is to be profitable. Therefore, as the risk of high liability exposure becomes more significant, insurers will be faced with difficult decisions. Some may be caused to reconsider whether New York is still a worthwhile market and others who decide to continue underwriting policies in New York may look to pass on the increased cost to their insureds in the form of increased premiums.

From a public policy viewpoint, the outlook is dim. Plaintiffs firms will be incentivized to delay prosecuting cases due to the prospect of securing higher awards.. This could result in a further backlog of civil cases in the New York court system, which is already busting at the seams as it continues to address the slowdown that occurred as a result of the pandemic.

Most importantly, what could this mean for New York state residents? While some insurers will be driven out of the New York market altogether, of those that remain, it is likely that higher premiums will be passed on to their insureds and cause many to either forego obtaining insurance or seek coverage from lower-rated insurers. This could lead to more challenges for these insureds from their insurers if the reported claim or suit is covered at all. As a result, the insureds' only recourse, if they have the means to do so, will be to hire private counsel to challenge any denial of coverage and also to assist in defending the lawsuit to protect against a default judgment. To make matters worse, should Assembly Bill A436/Senate Bill S8110 be enacted, interest will be running against the insureds from the date of accident on the amount of any judgment ultimately rendered against them.

Moving Forward

With the bill currently "In Committee," there is no telling when it may be signed into law should it be placed on the floor calendar, pass the senate & assembly, and be delivered to the governor. Now more than ever, civil defense attorneys must proactively litigate their cases and evaluate their defense strategy as new information is uncovered to obtain the best outcome for the insurance carrier that retained them and, most importantly, for the clients they represent.

The detrimental effect that this bill could have on the insurance industry and New York state residents cannot be overstated. Although the bill's sponsors seek to bridge the gap between how breach of contract and personal injury cases are handled, it must be acknowledged that a one-size-fits-all approach could have a long-lasting ripple effect in only further burdening a taxed New York civil litigation court system, potentially running insurance carriers out of this state, and resulting in increased premiums for New York residents who are able to obtain policies from the insurers that remain.

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